IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 15 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHATURBHUJ VERSI

Versus

VAGHER VASTA BHIKHA

Appearance:

MR HEMANT PRAKSHAK FOR MR YOGESH S LAKHANI for Petitioner

OPPONENT NO. 1 ABSENT THOUGH DULY SERVED

OPPONENT NO. 2 DIED PENDING THIS REVISION HENCE ABATED

MS BS GAJJAR, ASST P.P. FOR STATE

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 25/02/2000

C.A.V. JUDGEMENT

#. This is a Criminal Revision Application filed under

Section 401 read with Section 397 of Cr.P.C. filed by original complainant challenging an order of acquittal passed by the learned Judicial Magistrate, First Class, Dwarka by rendering his judgment, Exh. 35 dated 22.12.1988, in Criminal Case No. 628 of 1988.

#. The present Revision applicant lodged one complaint against the present opponents Nos. 1 and 2 in Okha Police Station and his complaint came to be registered as C.R. No. 42 of 1988 on 12-4-1988 and after investigation by police, charge sheet was filed against the present opponents Nos. 1 and 2 citing them as accused, and that charge sheet came to be registered as Summary Criminal Case No. 628 of 1988 in the Court of Judicial Magistrate, First Class, Dwarka and therefore the present petitioner is an original complainant and present opponents Nos. 1 and 2 are the accused in that case and therefore for the sake of convenience, the parties will be referred to hereinafter as the complainant and accused respectively.

#. The facts leading to this Criminal Revision Application in a nut shell are as follows:-

The complainant is residing at village Surajkharadi and he is doing business of iron scrap. On 12-4-1988 at about 7.45 a.m. the complainant was coming from his house on foot and when he was about to reach the bazar of village Surajkharadi, near the house of Dansang Bapu, accused No.2 came from behind and he inflicted a blow of hockey on his right arm. The complainant caught hold that hockey and meanwhile accused No.1 gave blows of dhoka on his leg. Thereafter accused No.2 inflicted blow of hockey on the head portion of the complainant as a result of which complainant was seriously injured and there was bleeding from his head portion. Thereafter both the accused ran away from the place. Thereafter one Rickshawala came there and he took the complainant in his rickshaw for medical treatment to Tata Hospital. Complainant lodged his complaint to police Head Constable, H.O. Vadia in the hospital at Mithapur. As said earlier that complaint came to be registered in Okha Police Station and subsequently after completion of investigation case was chargesheeted against both the accused. The learned Magistrate tried the case summarily.

#. After hearing the arguments of both the parties, the learned Magistrate delivered a judgment on 22-12-1988 whereby he acquitted both the accused under Section 248(1) Cr.P.C. for offences punishable under Section 325

and 34 of the I.P.C.

#. Being dissatisfied with and aggrieved against the said judgment the original complainant has preferred this Criminal Revision Application.

#. Shri Hemant Prakshak, learned advocate for the revision petitioner has argued that learned Magistrate has not appreciated the medical evidence in its correct perspective and he ought to have accepted the evidence of prosecution and convicted the accused for offence punishable under Section 323 of the I.P.C. It is his one another argument that the learned Magistrate has erred in not believing the three eye witnesses who were examined as P.W. 4, P.W. 5 and P.W. 6 by branding them as interested witnesses.

#. So far as the case of accused-opponent No.2 is concerned, it is not required to be considered as now this Revision Application has already been abated vide Court's order dated 24-1-1995, as he died during the pendency of this Revision Application.

#. So far as the case against accused-opponent No.1 is concerned, it is alleged in the complaint that accused No.1 inflicted blows of dhoka indiscriminately on his leg. The learned Magistrate has observed in paragraph 24 that P.W. 12 Dr. S.D. Mehta had examined the complainant who was brought to him at about 8.00 a.m. on 12-4-1988. Dr. Mehta has deposed as per observation of the learned Magistrate in paragraph 24 of the judgment that the complainant had sustained injuries mentioned in certificate Exh. 30, and that x-ray photographs were taken of both head portion and left leg and as per that x-ray photograph, there was a fracture in No.2 bone of the left leg, and a plaster bandage was applied and the applicant was discharged at about 6.00 p.m. on 19-8-1988. Thus, Shri Hemant Prakshak has argued that the complainant gets corroboration from the evidence of medical witness on the point of injury sustained on his leg. Still however, the learned Magistrate has acquitted both the accused. It may be noted that as observed in paragraph 24 of the judgment, Dr. Mehta has deposed that injuries were not of grievous nature, meaning thereby, the complainant had sustained simple injuries.

On reading paragraph 28 of the judgment, it is clear that the learned Magistrate has not believed the case of complainant so far as his case with regard to injuries sustained on his head. He has assigned reasons for not believing the case of injuries having been sustained by

the complainant on his head portion. Despite the fact that complainant is not believed, Shri Hemant Prakshak has argued that his case should be believed so far as case of injuries having been sustained by the complainant on his leg portion is concerned. The learned Magistrate has observed in his judgment that it was the case of the prosecution that accused No.1 had caused injury by handle of showel. The learned Magistrate has observed that there is discrepancy between the case of the complainant and the medical evidence. The learned Magistrate has appreciated the evidence of complainant vis-a-vis evidence of Medical Officer, and he has come to a conclusion that looking to the fact that Dr. has admitted that injuries were of simple nature, evidence of complainant cannot be said to have received corroboration from the medical evidence. The learned Magistrate has appreciated the evidence and assigned the reasons for not believing the case of the complainant. This Court does not find anything otherwise to come to a different conclusion, so far as case against accused No.1 is concerned.

#. The learned Magistrate had recorded evidence of P.W. 4, 5 and 6. P.W. 4 is a witness having a cabin for work of barber. P.W. 5 is serving in factory of Tata Chemicals Limited, whereas P.W. 6 is a person having hand-cart at village Surajkharadi. Shri Hemant Prakshak has emphatically argued that learned Magistrate has observed in his judgment that complainant's brother is Sarpanch of village Surajkharadi and therefore those witnesses have not fully supported the case of the complainant.

##. Shri Hemant Prakshak has further argued that this observation is unwarranted and it is merely an assumption and conjecture. After all, the learned Magistrate himself recorded evidence of said witnesses before his eyes and he has assigned the reasons for not believing them. This Court cannot reassess and appreciate the evidence of the said witnesses, again.

##. In the case of Khetra Basi Samal and another v. The State of Orissa etc. AIR 1970 SC 272, the Hon'ble Supreme court has held in paragraph 10 and 11 as follows:

> "10. This Court has had to examine the jurisdiction of the High Court under this section on several occasions. In D. Stephens v. Nosibolla, 1951 SCR 284 = (AIR 1951 SC 196) it was pointed out (see at p. 291 (of SCR) = (at p. 199 of AIR) that:

"The revisional jurisdiction conferred on the High Court under Section 439 of the Code of Criminal Procedure is not to be lightly exercised, when it is invoked by a private complaint against an order of acquittal, against which the Government has a right of appeal under Section 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower court has taken a wrong view of the law or misappreciated the evidence on record."

Again in Logendranath Jha v. Polailal Biswas, 1951 SCR 676 = (AIR 1951 SC 316) where the High Court had set aside an order of acquittal of the appellants by the Sessions Judge and directed their re-trial, this Court, see at p. 681 of SCR) = (at p. 318 of AIR), said:

"Though sub-section (1) of Section 439 authorises the High Court to exercise, in its discretion, any of the powers conferred on a court of appeal by Section 423, sub-section (4) specifically excludes the power to convert a finding of acquittal into one of conviction." This does not mean that in dealing with a revision petition by a private party against on order of acquittal, the High Court could in the absence of any error on a point of law re-appraise the evidence and reverse the findings of facts on which the acquittal was based, provided only it stopped short of finding the accused guilty and passing sentence on him. By merely characterising the judgment of the trial court as "perverse" and lacking in perspective" the High Court cannot reverse pure findings of fact based on the trial court's appreciation of the evidence in the case"

##.. In K. Chinnaswamy Reddy v. State of Andhra Pradesh, 1963-3 SCR 412 at p. 418 = (AIR

1962 SC 1788 at p. 1791) the court proceeded to define the limits of the jurisdiction of the High Court under Section 439 of the Criminal Procedure Code while setting aside an order of acquittal. It was said:

> "..... this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases when there is some glaring defect in the procedure and there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice ..... It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court or where the acquittal is based on a compounding of the offence, which is invalid under the law."

##. The above authority is on Section 439 of the Criminal Procedure Code, 1898 which is equivalent to Section 401 of Criminal Procedure Code, 1973 and therefore in view of legal position settled by the Hon'ble Supreme Court on the point of powers of High Court in revision, this Court is of the opinion that this is not an exceptional case to reappreciate the evidence led by the prosecution. After all, to believe or not to believe witnesses is an objective satisfaction of the learned Magistrate and therefore this is not a fit case to reappreciate the evidence of the witnesses and to set aside the order of acquittal.

In Criminal Revision Application , the revision petitioner has to satisfy the revisional Court that the order challenged in the revision is not correct, legal and proper. The learned Magistrate has passed his order

within his legal bounds after appreciating the evidence. This Court does not find anything otherwise to come to the conclusion that the order challenged in this Revision Application is either ill
and therefore this Revision Application deserves to be rejected. Therefore, this Revision Application is rejected.

(H.H. Mehta, J)